

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

|                       |   |                       |
|-----------------------|---|-----------------------|
| EDWARD NELLSON,       | ) |                       |
|                       | ) |                       |
| Plaintiff,            | ) |                       |
|                       | ) |                       |
| -vs-                  | ) | Case No. CIV-20-562-F |
|                       | ) |                       |
| GEORGE PETRY, et al., | ) |                       |
|                       | ) |                       |
| Defendants.           | ) |                       |

**ORDER**

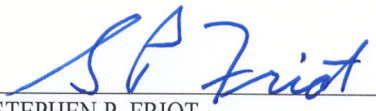
After the court's ruling on March 21, 2022, the only remaining defendant in this case is Dr. George Petry.

On January 25, 2023, United States Magistrate Judge Amanda Maxfield Green issued a Report and Recommendation (doc. no. 123) recommending that the court grant defendant's motion to dismiss (doc. no. 111) in part and dismiss plaintiff's action against defendant without prejudice under Rule 4(m), Fed. R. Civ. P., for failure to timely effectuate service of process on defendant and also dismiss plaintiff's action against defendant under Rule 41(b), Fed. R. Civ. P., for failure to comply with the court's March 21, 2022 order (doc. no. 97) requiring effectuation of service of process on defendant in accordance with Rule 4, Fed. R. Civ. P., and to file a proof of service on or before May 2, 2022. Magistrate Judge Green advised plaintiff of his right to file an objection to the Report and Recommendation on or before February 8, 2022, and specifically advised him that failure to file a timely objection to the Report and Recommendation waives the right to appellate review of both factual and legal issues therein contained.

To date, plaintiff has neither filed an objection to the Report and Recommendation nor requested any extension of time to file an objection. With no filing of a timely objection, the court finds that plaintiff has waived his right to appellate review of the factual and legal issues contained in the Report and Recommendation. *See, Moore v. United States*, 950 F.2d 656, 659 (10<sup>th</sup> Cir. 1991). Therefore, the court accepts, adopts, and affirms the Report and Recommendation in its entirety.

Accordingly, the Report and Recommendation (doc. no. 123) issued by United States Magistrate Judge Amanda Maxfield Green on January 25, 2023 is **ACCEPTED, ADOPTED, and AFFIRMED**. The Individual Defendant's Motion to Dismiss (doc. no. 111) is **GRANTED** in part. Plaintiff Edward Nellson's action against defendant Dr. George Petry (claims alleged in Count I and Count II of the Amended Complaint) is **DISMISSED WITHOUT PREJUDICE** under Rule 4(m), Fed. R. Civ. P., for failure to effectuate timely service of process, and under Rule 41(b), Fed. R. Civ. P., for failure to comply with the court's March 21, 2022 order requiring effectuation of service of process on defendant in accordance with Rule 4, Fed. R. Civ. P., and to file a proof of service on or before May 2, 2022.

IT IS SO ORDERED this 10<sup>th</sup> day of February, 2023.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE